

APPEAL NO. 020693  
FILED APRIL 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 20, 2002. He determined that the claimant sustained a compensable back injury on \_\_\_\_\_.

The employer, who contested compensability under the Employer's Bill of Rights, appealed this and argued that the claimant was not truthful and that its own witnesses were more believable. The claimant responds that the hearing officer did not err. The claimant further argues that the employer did not timely exchange evidence or a witness list.

DECISION

We affirm the hearing officer's decision.

The claimant objected to a copy of the required medical examination doctor's report as well as his own employment application on the basis of untimely exchange. He further objected to testimony of witnesses because of non-disclosure. The hearing officer found good cause for admission of evidence. Although the claimant's response is timely as an appeal, the claimant has not stated how he was harmed by the admission of such evidence. If the hearing officer abused his discretion, it was harmless error in light of the finding in favor of the claimant.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We note that part of the assessment of credibility of the evidence involves not only the veracity of evidence but the accuracy of what the witnesses may truthfully recall.

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support different inferences. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER  
PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge